

Congress of the United States
Washington, DC 20515

July 27, 2015

The Honorable Thomas E. Perez
Secretary of Labor

Ms. Adele Gagliardi
Administrator
Office of Policy Development and Research
Employment and Training Administration

U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

CC: The Honorable Thomas Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

RE: Opposition to the rule concerning the Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States.

RIN 1205-AB70

Dear Secretary Perez and Administrator Gagliardi:

We request that the Department of Labor (DOL) significantly revise the proposed rule regarding the H-2A “special procedures” program for sheepherding, goat herding, and open range livestock. Our family sheepherders use this crucially important program to produce agricultural products and it has been central to rural communities across the West for more than 60 years. In addition, through the grazing of sheep and cattle, these producers help the U.S. government manage more than 250 million acres of public land.

As Members of Congress, we are directly accountable to the United States citizens we represent. Every one of us has heard from associations, producers, and constituents that as the proposed rule is currently written – it would put family farms out of business, eliminate this industry, and end a way of life in the American West. As such, we feel compelled to defend the history and heritage of sheepherding.

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Put simply, the proposed H-2A special procedures rule does not take into account the facts, functions, and operations that occur on the ground when it comes to sheepherding and open range livestock management practices.

The most devastating impact to our constituents in the proposed rule is the definition of “open range.” (80 FR 20339) It is estimated this change will exclude approximately 40 percent or more of the employers currently using the H-2A special procedures program. The current definition has no practical application to the state of private and public lands across the country. Nearly every parcel of land is bounded by fences, and any reference to “unenclosed” land is irrational. This definition of “open range” would eliminate the work H-2A special procedures employees are able to perform. Accordingly, we request that DOL remove this definition of “open range” from the proposed rule in its entirety.

Another critical issue is the proposed changes to the wage standards. The current proposal would triple the cost of employing H-2A sheepherders. As with many agricultural industries, hired labor is a critical and expensive input; tripling the cost of this key input would cripple essential sheep operations that rely on the H-2A special procedures program. Therefore, we request the DOL withdraw the proposed wage methodology and replace it with a version that ensures the H-2A special procedures program is workable and the U.S. sheep industry is sustainable.

The proposed rule also does not follow the true intention and purpose of an Initial Regulatory Flexibility Analysis (RFA), as DOL failed to prepare a valid RFA. The rule openly concedes that it “will have a significant economic impact on a substantial number of small entities.” (80 FR 20330)

As the proposed rule is currently written, the RFA does not take into account the elimination of family farms, include an analysis of hidden costs based on the change in work function, or calculate the economic loss to rural communities. The “Alternatives to the Proposed Rule” (80 FR 20330) limits the options for H-2A special procedure changes to be phased in over five years, three years, or an immediate phase-in schedule. DOL neglected any alternative that includes common sense implementation of the H-2A special procedures program to provide relief and stability for H-2A special procedures workers and employers. Thus, we request that DOL revise the RFA to address these concerns.

A number of herding employers, including range producers of livestock and sheep, rely on the H-2A special procedures program to obtain essential labor through legal channels. Some family ranchers have used a version of this program since the 1950s, and many have used H-2A special procedure workers since the late 1980s. The rules applicable to this program are critical to key sheep and wool industries across the nation. Because of this, we request that DOL follow

the suggested comments of our constituents and address our direct concerns as the regulatory process continues.

Thank you for your immediate attention and assistance with request.

Sincerely,

Cynthia M. Lummis

Michael B. Enzi

John Barrasso

Raúl R. Labrador

Steve Daines

Jeffrey M. Sessions

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